

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

92-CR-113-C

JOSEPH AMOIA,

Defendant.

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**ORDER DISMISSING THE DEFENDANT'S**  
**MOTION TO REDUCE SENTENCE BECAUSE OF**  
**CHANGE IN USSG'S; & 28 USC § 1641**

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**UPON** a reading of the government's Motion to Dismiss the Defendant's "Motion to Reduce Sentence Because of Changes in USSG'S; & 28 USC § 1641" on The Ground That It Is A "Second Motion" Filed Pursuant To 28 U.S.C. § 2255 and Has Not Been Certified By A Panel Of the Court of Appeals and the Memorandum of Law filed by the government in support of its Motion to Dismiss, and upon due consideration,

**THE COURT FINDS** that the defendant's "Motion to Reduce Sentence Because of Changes in USSG'S; & 28 USC § 1641" ("defendant's current motion") is a second motion to vacate or set aside the defendant's sentence on the ground that it was imposed in violation of the Constitution or the laws of the United States, filed pursuant to 28 U.S.C. § 2255 and

**THE COURT FURTHER FINDS** that the defendant's current motion was filed without first obtaining the proper certification from a panel of the Court of Appeals for the Second Circuit that the defendant's current motion "contains a new rule of Constitutional law made retroactive on collateral review by the Supreme Court, that was previously unavailable" to the defendant, and

**THE COURT FURTHER FINDS** that, even assuming that the defendant obtained the appropriate certification from a panel of the Court of Appeals and that his current motion had merit, the defendant's current motion was filed more than one year after the Supreme Court's January 15, 2005 decision in *United States v. Booker*, 534 U.S. 220 (2005) and is thus barred by the one year limitation imposed by 28 U.S.C. § 2255, and on the basis of all of the foregoing it is:

**ORDERED** that the defendant's "Motion to Reduce Sentence Because of Change in USSG'S; & 28 USC § 1641" is and is hereby dismissed with prejudice, and it is further

**ORDERED** that the defendant's motion for release on bail pending a determination of the current motion is denied, and it is further

**ORDERED** that no Certificate of Appealability shall be issued.

DATED: Buffalo, New York, September 5, 2006.

          \s\ John T. Curtin            
HON. JOHN T. CURTIN  
United States District Judge